

STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

SUSIE A. BARFIELD, ET. AL.

Plaintiff(s)

vs.

Norfolk Southern Corporation, Jimmy
Thornton, and Mike Ford.

Defendant(s)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2008 - CP - 02 - 67

(Please Print)

Submitted By: John Robert Peace

Address: Post Office Box 88087

Greenville, South Carolina 29604-8087

SC Bar #: 15521

Telephone #: (864) 298-0500

Fax #: (864) 271-3130

Other:

E-mail: john@peacelawfirm.com

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- ☐ JURY TRIAL demanded in complaint. ☒ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Circuit Court Alternative Dispute Resolution Rules.
☐ This case is subject to MEDIATION pursuant to the Circuit Court Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR (certificate attached).

NATURE OF ACTION (Check One Box Below)

Contracts

- ☐ Constructions (100)
☐ Debt Collection (110)
☐ Employment (120)
☐ General (130)
☐ Breach of Contract (140)
☒ Other (199)

~~Earnest Money Dispute~~

Torts - Professional Malpractice

- ☐ Dental Malpractice (200)
☐ Legal Malpractice (210)
☐ Medical Malpractice (220)
☐ Other (299)

Torts - Personal Injury

- ☐ Assault/Slander/Libel (300)
☐ Conversion (310)
☐ Motor Vehicle Accident (320)
☐ Premises Liability (330)
☐ Products Liability (340)
☐ Personal Injury (350)
☐ Other (399)

Real Property

- ☐ Claim & Delivery (400)
☐ Condemnation (410)
☒ Foreclosure (420)
☐ Mechanic's Lien (430)
☐ Partition (440)
☐ Possession (450)
☐ Building Code Violation (460)
☐ Other (499)

Inmate Petitions

- ☐ PCR (500)
☐ Sexual Predator (510)
☐ Mandamus (520)
☐ Habeas Corpus (530)
☐ Other (599)

Judgments/Settlements

- ☐ Death Settlement (700)
☐ Foreign Judgment (710)
☐ Magistrate's Judgment (720)
☐ Minor Settlement (730)
☐ Transcript Judgment (740)
☐ Lis Pendens (750)
☐ Other (799)

Administrative Law/Relief

- ☐ Reinstate Driver's License (800)
☐ Judicial Review (810)
☐ Relief (820)
☐ Permanent Injunction (830)
☐ Forfeiture (840)
☐ Other (899)

Appeals

- ☐ Arbitration (900)
☐ Magistrate-Civil (910)
☐ Magistrate-Criminal (920)
☐ Municipal (930)
☐ Probate Court (940)
☐ SCDOT (950)
☐ Worker's Comp (960)
☐ Zoning Board (970)
☐ Administrative Law Judge (980)
☐ Public Service Commission (990)
☐ Employment Security Comm (991)
☐ Other (999)

Special/Complex /Other

- ☐ Environmental (600)
☐ Automobile Arb. (610)
☐ Medical (620)
☐ Pharmaceuticals (630)
☐ Unfair Trade Practices (640)
☐ Other (699)

FILED

1-4

2008

J.R. PEACE

Deputy Clerk

Submitting Party Signature:

David W. Miller FOR J.R. PEACE

Date: January 4, 2008

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

****FOR MANDATED ADR COUNTIES ONLY**

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral within 210 days of filing of this action, and the Plaintiff shall file a "Stipulation of Neutral Selection" on or before the 224th day after the filing of the action. If the parties cannot agree upon the selection of the neutral within 210 days, the Plaintiff shall notify the Court by filing a written "Request for the Appointment of a Neutral" on or before the 224th day after the filing of this action. The Court shall then appoint a neutral from the Court-approved mediator/arbitrator list.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Case are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Cases which are appellate in nature such as appeals or writs of certiorari;
 - c. Post Conviction relief matters;
 - d. Contempt of Court proceedings;
 - e. Forfeiture proceedings brought by the State;
 - f. Cases involving mortgage foreclosures; and
 - g. Cases that have been submitted to mediation with a certified mediator prior to the filing of this action.
4. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference had been concluded.

**Please Note: You must comply with the Supreme Court Rules regarding ADR.
Failure to do so may affect your case or may result in sanctions.**

**** Florence, Horry, Lexington, Richland, Greenville, and Anderson**

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF AIKEN

SECOND JUDICIAL CIRCUIT

C/A No.: 2008-CP-02- 67

SUMMONS AND NOTICE

SUSIE A. BARFIELD, TOMMY G.
BARTON, SR., CHARLES R. BEARD,
SHIRLEY J. BLACK, HOWARD
BOWMAN, ANTONIO M. BRIDGES,
MICHAEL W. BURTON, JOHN H.
BUTLER, LAURA A. BUTLER,
HATTIE CARR, CHARLES CHEEK,
HENRY CURRY, JR., JOSEPHINE
CURRY, TERRY DOBBS, GEORGE M.
DOOLITTLE, HERBERT C. DOWLING,
SANDRA FELDER, JOSE ARTURO
FONTANEZ, JANIS C. FRANCISCO,
PRICE A. FULMER, SANDRA A. GANTT,
WESLEY GIBSON, MARCELINO T.
GOMEZ, REGULO HERRERA
GONZALES, BARRY E. GRAHAM,
GLENN C. GRIFFIN, ROY E. GROVER,
SR., PHYLLIS R. GUNTER, RONNIE
HALLMAN, EARNEST HARRIS,
ROBERT O. HARRIS, BETTY JEAN
HERRIN, DONNIE L. HERRIN,
GLORIA HERRIN, BRENDA M.
HOLMES, CHARLES P. HOLMES,
BETTY JEAN KEY, ARTHUR
KITCHINGS, CHARLES E. LAMBERT,
DAVID S. MANUEL, ANDRES
Q. MARCHAN, SAMMY MARONEY,
ERNESTINE MCCLENDON, HENRY
MCCLENDON, CATHERINE
MCCOLLOUGH, MARY MCCULLOUGH,
JOHN HENRY MEALING, DONALD
MILLER, ROOSEVELT MIMS, SAMUEL
L. MITCHELL, RICHARD K. NAPIER,
SCOTT NICKERSON, MELISSA
OAKMAN, TRACY OAKMAN,
ALFONSO FLORES ORTIZ, WILLIE
PATTEN, JR., GEORGE PATTON,
MULMARO LOPEZ PEREZ, ALFONSO
PETERSON, WILLETTE PETERSON,
WILLIAM L. PLOTTS, JR., JAMES M.
POPE, AMIEE H. PRESSLEY, CHARLES B.
QUATTLEBAUM, DONNIE W. REARDEN,

FILED 1-4 2008 8:45 pm
L. J. Haddad
C.C.P. & G.S.
Charles D. Wilson Jr.
Deputy Clerk

pd. 150⁰⁰
cpt. 244893

VINCE E. READY, JOSEPH T. REESE, JR.,
CHRISTY RIGGS, MICHELLE ROBERSON,
FREDDIE M. ROBINSON, JR., LORENE
ROBINSON, STEVE ROSBACH, LEONA
ROUSE, BRENDA SMITH, TERRY L.
SMITH, MARTY E. SPRADLEY, JOSEPH B.
STALLINGS, KATHY STEELE, LONNIE
R. TINSLEY, GAY W. TUBERVILLE,
WESLEY TURNER, BETTY M. TYLER,
MARIO RECEIV RECINOS VELASQUEZ,
GREGORY L. WASHINGTON, LUTHER
W. WELLS, ANGELIA WEST, DOROTHY
G. WILLIAMS, LAKEBA WILLIAMS,
LINDA G. WILLIAMSON, LOIS J.
WRIGHT, MARY BAFFOUR, TERESA C.
BAILEY, GINELLE BATTLE, CHARLES
E. BLACK, DONALD L. BLACK,
CYNTHIA BOOKER, JOHN
BROADWATER, VICTORIA J. BYRD,
JOSE ANTONIO CARRILLO, DANNY
CHALKER, EARNEST CLARK, MARIA
COLEMAN, KEDERICK CRANDALL,
ANNIE LOU CRAWFORD, FANNIE
DEVINE, MARK DURSHIMER,
SARAH GAINES, ROBERT A. GARN,
EDWARD GREGORY, CHRISTOPHER
HARRIS, JOHN S. HATCHER, LILLIANN A.
HATCHER, EARNESTINE HOWARD,
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PAULENE McKIE, KEVIN J. MIMS,
ROOSEVELT MIMS, REBIA C. MOMENT,
MARY V. PADGETT, ANNIE R. QUILLER,
GONZALO M. RAMIREZ, WHITFRIED
RYANS, SALLIE MAE SAMUELS, JANIE
R. SHUMPERT, MONTINE SIMPKINS,
RICHARD SIMPKINS, RAYMON
SINQUEFIELD, LEON STEWART,
DAVID STROM, TIMOTHY W. THAXTON,
BERTHA VAUGHN, OLIVERIO D.
VILLAVAZO, NELSON WILLIAMS, JR.,
PHYLLIS A. WILLIAMS, AND JOHN DOES
1 - 25 AND JANE DOES 1 - 25

Plaintiffs,

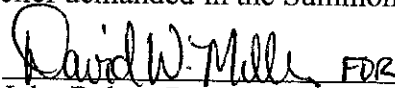
v.

Norfolk Southern Corporation, Jimmy,
Thornton, and Mike Ford

Defendant.

TO THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Summons and Complaint herein, a copy of which is herewith served upon you, and to serve a copy of your Answer to said Summons and Complaint upon the subscriber at, JOHN ROBERT PEACE, PA, Post Office Box 8087, Greenville, South Carolina 29604-8087, within thirty (30) days after the service hereof and if you fail to answer the Summons and Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Summons and Complaint.

 FOR

John Robert Peace, Esq., SC Bar # 15521

John Robert Peace, P.A.

P.O. Box 8087

Greenville, South Carolina 29604-8087

Phone 864-298-0500

Fax 864-271-3130

Attorney for Plaintiffs

Greenville, S.C.

Dated: January 4, 2008

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IN THE COURT OF COMMON PLEAS

COUNTY OF AIKEN

SECOND JUDICIAL CIRCUIT

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POPE, AMIEE H. PRESSLEY, CHARLES B.
QUATTLEBAUM, DONNIE W. REARDEN,

C/A No.: 2008-CP-02-_____

DECLARATORY JUDGMENT
ACTION

FILED 1-4 2008 @ 4:50 pm
L. J. Hadard
C.C.P. & G.S.
Debra J. Wilson
Deputy Clerk

VINCE E. READY, JOSEPH T. REESE, JR.,
CHRISTY RIGGS, MICHELLE ROBERSON,
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PHYLLIS A. WILLIAMS, AND JOHN DOES
1 - 25 AND JANE DOES 1 - 25

Plaintiffs,

v.

Norfolk Southern Corporation, Jimmy,
Thornton, and Mike Ford

Defendant.

This case arises out of a collision between two Norfolk Southern Corporation ("Norfolk Southern") freight trains in the early morning hours of January 6, 2005 in Graniteville, South Carolina, located in Aiken County. The term "Defendants," as used herein refers to Norfolk Southern Corporation, Jimmy Thornton and Mike Ford.

PARTIES, JURISDICTION AND VENUE

1. Plaintiffs are citizens and residents of South Carolina and Georgia who were employed at all relevant times at the Avondale Mills or related entities.
2. Norfolk Southern is a Virginia corporation with its principal place of business in the state of Virginia. Norfolk Southern transacts business in South Carolina, and maintains significant contacts with Aiken County through the operation of freight trains on railway lines. The accident at issue occurred in Aiken County, South Carolina.
3. Defendant Jimmy Thornton is a resident of Richland County, South Carolina and was an employee of Norfolk Southern at all times material to the Complaint.
4. Defendant Mike Ford is a resident of Richland County, South Carolina and was an employee of Norfolk Southern at all times material to the Complaint.
5. Based upon the foregoing, jurisdiction and venue are appropriate before this Court. Further, this Court has jurisdiction pursuant to South Carolina Code § 15-53-10 *et seq.*, known as the Uniform Declaratory Judgment Act.

FACTUAL ALLEGATIONS

6. In the early morning hours of January 6, 2005, a Norfolk Southern freight train carrying hazardous chlorine gas collided with a parked Norfolk Southern train.

7. Norfolk Southern was responsible for the proper operation of the train, and its negligence caused the collision of the Norfolk Southern trains in the early morning hours of January 6, 2005.

8. Norfolk Southern, acting through its agents Jimmy Thornton and Mike Ford, negligently failed to line the switch to the main line track, and this negligence led to the collision and derailment.

9. As a result of the collision of the engines, the chemical cargo in the moving train derailed, causing chlorine gas to be emitted into the surrounding environment.

10. The chlorine gas contaminated the entire area, including without limitation, the facilities and machinery of the Avondale Mills located in Graniteville, South Carolina.

11. Over the ensuing months and years, defendants made repeated efforts to clean and repair the facilities of Avondale Mills. These repairs were unsuccessful and in May of 2006, the Avondale Mills closed their facility in Graniteville.

12. As a result of the negligence of the defendants jointly and severally, the Avondale Mill closed and Plaintiff(s) lost all means of livelihood after working at the Avondale Mills for a period of time. Plaintiff(s) were damaged and are entitled to know whether South Carolina law allows them a recovery.

REQUEST FOR DECLARATORY RELIEF

13. Various individuals similarly situated to Plaintiff have brought at least three negligence actions which have been submitted to the United States District Court for the District of South Carolina. See, Self v. Norfolk Southern, 2007 WL 540373 (D.S.C. 2007)(2 actions combined) and Lanier v. Norfolk Southern, 2006 WL 1878984 (D.S.C. 2006)

14. Each of these actions has alleged that plaintiffs were injured by Defendant Norfolk Southern based upon the closing of the Avondale Mill.

15. On information and belief, plaintiffs in at least one of the above-referenced actions made request(s) to certify this issue to the South Carolina Supreme Court, and this request(s) was denied by the United States District Court.

16. In Self, the District Court dismissed plaintiffs' causes of action as follows:

- a. the negligence claim was dismissed based upon the economic loss rule;
- b. the tortious interference with contractual relations claim was dismissed for failure to show anything other than pecuniary harm;
- c. the strict liability claim was dismissed based upon preemption by the Hazardous Materials Transportation Act and the Federal Railroad Safety Act; and,
- d. the res ipsa loquitur claim was dismissed based upon South Carolina precedent which does not acknowledge the doctrine of res ipsa loquitur.

17. The holding of the District Court in Lanier concerning solely the claim of negligence is virtually identical to the ruling in Self.

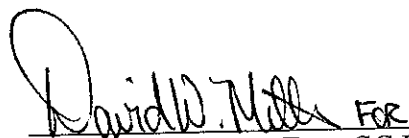
18. The decisions of the United States federal courts as to the law of South Carolina are solely efforts by those courts to apply the law of South Carolina. In the case of unresolved issues, they serve only as predictions by the federal court of what that court anticipates the courts of South Carolina would hold. As such, federal court decisions are not a binding statement of South Carolina law and are merely persuasive authority as to South Carolina law.

19. The District Court's dismissal of these claims wrongly decided issues of South Carolina law and, pursuant to S.C. Code Ann. Section 15-53-20, et seq (1976, as amended) Plaintiff is entitled to a determination of whether he has any right to pursue these claims under South Carolina state law.

WHEREFORE, Plaintiff, prays that the Court enter judgment against Defendants in favor of the Plaintiff, and to award the following relief:

(a) A declaratory judgment that Plaintiff and all similarly situated plaintiffs are entitled to pursue their claims for negligence against the Defendant based upon claims of negligence and tortious interference with contractual relations notwithstanding the economic loss rule; and,

(b) Such other or further judicial determinations and relief as may be appropriate in this proceeding.

 For
John Robert Peace, Esq., SC Bar # 15521
John Robert Peace, P.A.
P.O. Box 8087
Greenville, South Carolina 29604-8087
Phone 864-298-0500
Fax 864-271-3130

Attorney for Plaintiffs

Greenville, S.C.
Dated: January 4, 2008